***THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

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+W.P.NO.26940 OF 2003

% 04-07-2005

Srinivasa Degree College .. PETITIONER

VS.

$ Sri Venkateswara University, Tirypathi ..RESPONDENT

! COUNSEL FOR PETITIONER: Sri.M.V.S.Suresh Kumar, Advocate.

^ COUNSEL FOR THE RESPONDENT No.1: Sri.P.Sree Ramulu Naidu

COUNSEL FOR THE RESPONDENT NO.2: GOVT. PLEADER FOR HIGHER EDUCATION

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 26940 of 2003

Between:

Srinivasa Degree College, Rep by its Correspondent C. Sri ram
Kovur, Nellore Dist.

..... PETITIONER

AND

1 Sri Venkateswara University, Rep by its Registrar
Tirupathi.
2 A.P. State Council of Higher Education, Rep by its Secretary,
Saifabad, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to declare the condition imposed by the first respondent University in its affiliation order ROC No. C/111(5)/2003-04 dated 9-7-2003 directing the petitioner to obtain the permission of second respondent for shifting the college to the new building on or before 31-12-2003 as otherwise extension of affiliation for the year 2005-05 will not to granted and that the petitioner will not be permitted to made admissions for the academic year 2004-2005 as illegal, arbitrary and unjust and direct the respondents herein to consider the grant of permanent affiliation to the petitioner by issuing a writ of mandamus or any other appropriate writ, order or direction.

Counsel for the Petitioner: MR.M.V.S.SURESH KUMAR

Counsel for the Respondent No.1: MR.P.SREE RAMULU NAIDU

Counsel for the Respondent No.2: Government Pleader for Higher Education.

The Court made the following :

O R D E R :

1. This Writ Petition is filed by Srinivasa Degree College, Kovur, Nellore District, represented by its Correspondent C.Sriram with a prayer to issue a Writ of Mandamus declaring the condition imposed by the 1st respondent-Sri Venkateswara University, Tirupathi in its affiliation order vide ROC.No.C/III(5)/2003-04 dated 9.7.2003 directing the petitioner-college to obtain permission of A.P. State Council of Higher Education (2nd respondent) for shifting the college to the new building on or before 31.12.2003.

2. The writ affidavit averments in brief are; the petitioner-college applied in the prescribed proforma under Form I of Rules 5(1) of A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (for brevity 'Rules, 1987') for establishment of a degree college during the year 1996. The petitioner-college was proposed to be established in an extent of Ac.2-01 cents at Kovur, Nellore District. The college commenced in the name of Sri Venkateswara Degree College of Computers. Subsequently the name was changed to Srinivasa Degree College as there was another college in the vicinity bearing the same name. The power to grant or refuse to start a college under Rules, 1987 was vested with the Commissionerate of Higher Education. Subsequently, the power to sanction was delegated to A.P.State Council of Higher Education-2nd respondent herein. Pursuant to the application made by the petitioner-college proposing to start a degree college at Kovur, the 2nd respondent herein has sent a Verification Commission. The Commission submitted its report and thereupon 2nd respondent granted permission to start degree college vide Proceedings RC.No.A/SCHE/VG/AC-5/Sec/96, dated 9.9.1996. The 1st respondent herein granted affiliation of the petitioner-college for the year 1996-97 after due inspection by the University Affiliation Commission. Temporary conditional affiliation was being granted every year after due inspection of temporary accommodation in Nellore and permanent location in Kovur where buildings were being constructed. 1st respondent-University granted extension of affiliation to the petitioner-college for

the academic years 1998-99 and 1999-2000 subject to the conditions stipulated in the inspection commission report and compliance of the same. The report of the inspection commission for the year 1999-2000 clearly stated that the management should run the courses in the new building for the academic year 1999-2000. A compliance report dated 29.11.1999 was been sent by the petitioner-College to the 1st respondent. The first respondent has instructed the Chairman of the Inspection Commission to ensure compliance of all basic requirements by the petitioner-college. Accordingly, the Inspection Commission visited the petitioner-college at Kovur. The 1st respondent-University in the affiliation order dated 9.7.2003 remarked that the petitioner-college constructed buildings in its own land at Kovur and shifted the college from Nellore to Kovur without obtaining permission of second respondent. The affiliation order dated 9.7.2003 further directed the petitioner-college to obtain permission from 2nd respondent herein for shifting the college to new building on or before 31.3.2003 as otherwise the extension of affiliation for the year 2004-2005 will not be granted and that the petitioner-college will not be permitted to make admissions for the year 2004-2005 and that suitable action will be taken against the petitioner-college by placing the matter before the authorities. The petitioner-college made representation to the 1st respondent on 7.8.2003 and also on 26.8.2003, but first respondent had not attended to the representations of the petitioner-college. There is absolutely no deficiency in running the college in its own premises at Kovur. The Rules, 1987 do not contemplate any permission to be obtained from 2nd respondent for running the courses in the sanctioned locations since permission was already granted for locating the college at Kovur. Hence, this writ petition questioning the condition imposed by the first respondent-university in its affiliation order dated 9.7.2003.

3. The first respondent-University has filed its counter and the same has been adopted by the 2nd respondent. It is stated in the counter that the second respondent in its proceedings No.APSCHE/ UG/ACS/SEC/96, dated 9.9.1996 permitted the petitioner to start a new Degree College namely Srinivasa Degree College, under the Societies name S.V.Human Resources Development Society at Door No.15/53, Brindavanam, Nellore. On the recommendations of the Inspection Commission, the first respondent- University granted temporary conditional affiliation to the petitioner-

college. Later on the college has been granted extension of affiliation for the existing courses upto the academic year 2003-2004. Inspection Commissions were appointed in connection with the grant of affiliation and were asked to visit the petitioner-college situated at Brindavanam, Nellore only. The 1st respondent University never gave any specific instructions to the Inspection Commission to visit the new buildings of the petitioner-college situated at Kovur. The 1st respondent-University has appointed Inspection Commission to visit the petitioner-college during the year 1999-2000 to verify and submit a detailed report whether the college is fit for grant of extension of affiliation for the academic years 1998-99 and 1999-2000. The Inspection Commission inspected the college on 25.1.1999 and submitted a detailed report recommending for grant of extension of affiliation for the years 1998-99 and 1999-2000. During the inspection, they remarked that the management should run the courses in the new buildings from the academic year 1999-2000 and also recommended for another Commission to verify whether the college has started all the courses in the new building or not. The petitioner-college was granted extension of affiliation for the year 1998-99 and 1999-2000 and directed the Correspondent of the college to fulfill all the conditions/deficiencies pointed out by the Inspection Commission while communicating a copy of the Inspection Commission report. The Inspection Commission has no jurisdiction to recommend for any shifting of the college. More over the Inspection Commission has simply offered their remarks in their inspection report. The petitioner has thoroughly mistaken the remarks of the Inspection Commission and thus shifted the college from Brindavanam, Nellore to Kovur without obtaining prior permission of second respondent. Under Rule 14(3) of the Rules, 1987 any unauthorized shifting of the institution shall render lapse of the permission/recognition/affiliation granted to the institution automatically, without any further notice or orders vide GO.Ms.No.29, dated 5.12.1987. The petitioner has neither informed R1/R2 nor sought any permission or ratification about shifting of the college. The Government of Andhra Pradesh delegated the power to grant or refuse permission for establishment of various categories of educational institutions to the second respondent. Rule 9 of the said Government Order deals with the power to grant or withdraw recognition/affiliation. The competent authority is the second respondent-University of the concerned area. When the petitioner-college was granted new combinations/ courses for the year 2003-04 in the proceedings of the second respondent, it was clearly noted that the college has to take the permission for shifting the college from

Brindavanam, Nellore to Kovur. The Rules governing the establishment of new degree college/new courses/ combinations/additional sections are very clear that the prior approval of 2nd respondent with regard to shifting of the college from one place to another is compulsory vide proceedings dated 23.7.2003. The Inspection Commission visited the college on 19.4.1998 and recommended for extension of affiliation for the year 1997-98. While recommending temporary affiliation for B.Sc. Maths, Stats, Computer Science English medium 30 seats, the Inspection Commission remarked that "the management has built new building to house the college from the next academic year 1998-99. They may be advised to buy some more computers in the third year and also recommended another Commission at the end of the third year when they occupy the new premises." The Inspection Commission which visited the college during the year 1999-2000 i.e. on 25.1.1999 for extension of affiliation for the academic years 1998-99 and 1999-2000 remarked that the college has to run the courses in the new building from the academic year 1999-2000. The petitioner-college did not take any action in seeking ratification with regard to its shifting. The Inspection Commission which visited the petitioner-college during the academic year 2003-2004 for considering extension for the existing courses noted that the college has been shifted to the new building without obtaining prior permission from the respondents. The same was indicated to the petitioner-college along with the affiliation order and was directed to obtain necessary permission/ratification from the 2nd respondent on or before 31.12.2003 by Memo.No.C-III(5)/2003-04, dated 9.7.2003. The petitioner-college for the first time made a proposal directly to the second respondent seeking permission/ ratification for shifting of the college by its representation dated 12.9.2003. Based on the proposal of the petitioner-college, second respondent directed the petitioner-college to substantiate the ten points that have been mentioned in the letter dated 15.9.2003 and to resubmit the proposal after fulfilling the same. Instead of submitting the proposals as required by the second respondent, the petitioner has submitted the same to first respondent which was duly forwarded to the second respondent. In reply, the second respondent requested the first respondent to appoint Inspection Commission to verify the ten points mentioned in their letter dated 15.9.2003 and to submit a report recommending for shifting of the college, unauthorisedly, for ratifying the same. The petitioner was immediately requested to submit the proposals with relevant documents and necessary fees for conducting inspection and to recommend for ratification of the action taken by the Correspondent in shifting the

college by letter dated 21.11.2003. But the petitioner-college has not responded so far to the above letter. When the respondents are ready to consider the issue of shifting of the college by the petitioner-college in a very considerate manner, the petitioner-college instead of availing the facility being offered by the concerned authorities represented the matter to the Hon'ble Chief Minister of Andhra Pradesh. W.P.No.12340 of 2003, a Public Interest Litigation, was filed by the Society for Common Cause, Nellore against the respondents and other private colleges in Nellore District. A detailed counter affidavit was filed by the respondents in the above referred writ petition stating that necessary action will be taken on the colleges which violated the norms of APSCHE/University. The petitioner-college constructed its own buildings in Kovur, Nellore District way back in the year 1998. It is mandatory on the part of the management to seek prior approval/permission of APSCHE/university or get ratification of their action in shifting the college.

4. Heard learned counsel for the petitioner-college, Standing Counsel for 1st respondent-University and Government Pleader for Higher Education appearing for 2nd respondent-APSCHE.

5. It is an undisputed fact that the petitioner-college was permitted to run the college in a rented building temporarily at Nellore for a period of three years. Thereafter, the college was to run in its own permanent building at Kovur. The permission was to run the college at Kovur and the temporary permission was to house the college in a rented premises at Nellore. Repeated inspections were issued to the petitioner-college by the Inspection Commissions appointed by the 1st respondent-University to grant affiliation for commencement of courses in its own building at Kovur. Their inspection reports indicated that the petitioner-college should run courses in its own building from the academic year 1999-2000.

6. It is the contention of the petitioner-college that permission was granted to establish the college at Kovur in its permanent building and temporarily the

petitioner-college was permitted to run courses in rented premises for a period of three years and therefore no further permission was required for running the courses in its own building at Kovur. In other words, commencement of classes in new premises does not amount to shifting the college from Nellore to Kovur.

7. Learned Standing Counsel appearing for the 1st respondent-University submits that permission for shifting the petitioner-college from Nellore to Kovur is essential and as the petitioner-college did not obtain any such permission, it amounts to clear contravention of Rule 14 (3) of the Rules, 1987.

8. Before dwelling on the rival contentions of the parties I deem it appropriate to refer the reports of the Inspection Commission for the academic years 1998-99 and 1999-2000. The Inspection Commission remarked in its report that the management should run the courses in the new building from the academic year 1999-2000. Column Nos.7 and 8 of the consolidated report of the Inspection Commission are relevant and they are :

" 7. Any other specific remarks of the Commission:

The management should run the courses in the new buildings from the academic year 1999-2000.

8. Whether you recommend visit of another Commission at the end of the first year?

Yes. Another Commission may be sent during 1999-2000 to see whether all the courses are started in the buildings or not."

The petitioner-college while reporting compliance of objections informed 1st respondent-University that the petitioner-college is running the courses in its own building from the academic year 1999-2000. The Inspection Commission inspected the petitioner-college for the academic year 2001-2002 and 2002-2003. The fact that the petitioner-college commenced classes in its new building has been noted by the Inspection Commission in its reports.

9. For the first time, the first respondent-University informed the petitioner-college under letter dated 9.7.2003 that the petitioner-college shifted from Brindavanam,

Nellore to Kovur without the permission of 2nd respondent/1st respondent. The question that falls for consideration is whether the commencement of classes by the petitioner-college in its new premises can be termed as shifting the college from Brindavanam, Nellore to Kovur. At the cost of repetition I may state that the petitioner-college was permitted to run the classes in a rented premises in Nellore till the construction of new building at Kovur. The permission granted by 2nd respondent is crystal clear that the petitioner-college was permitted to run classes in rented premises for the time being and it was to construct its own building during the course of time. The petitioner-college was directed to run the courses in its new building at Kovur from the academic year 1999-2000 vide consolidated report of the Inspection Commission dated 25.1.1999.

10. Learned counsel appearing for the petitioner-college submits that the commencement of courses in its new building does not amount to shifting the college from one place to another and therefore no permission was required either from the first respondent or the second respondent for commencement of classes in its own building which is in compliance of the recommendations made by the Inspection Commission of first respondent-University. Whereas it is submitted by learned Standing Counsel appearing for the first respondent-University that permission for starting the degree college clearly indicated that the petitioner-college should not be shifted to any other place without prior permission. Much emphasis has been made on clause 7 of the permission Order dated 9.9.1996 which reads thus:

" 7. The college should not be shifted to any other place without prior permission."

At the first blush his contention appears to be sound. But on close scrutiny of the Proforma II whereunder 2nd respondent accorded permission to the petitioner-college to run the courses, his contention has no merit. Permission to the petitioner-college was to run the courses in its permanent building proposed to be constructed at Kovur. While granting permission, the petitioner-college was permitted to run the classes temporarily in a rented premises at Nellore. In such a situation, commencement of classes by the petitioner-college in its new premises cannot be

termed as shifting the college from one place to another place or from one locality to another locality. Rule 14(3) of the Rules, 1987 which has been over emphasized by the learned Standing Counsel appearing for the 1st respondent-University reads as follows:

" 14(3) No Institution for which permission to establish has been granted to meet the educational needs of a particular locality, shall be permitted to be shifted to another locality. However, shifting of the institution from one building to another within the same locality shall be permitted when the intention is to provide better accommodation or shifting into own buildings is proposed, with the prior permission of the Government. Any unauthorized shifting of the institution shall render lapse of the permission/recognition/affiliation granted to the institution automatically, without any further notice or orders."

The above rule can be divided into two parts. The first part bars the institution, which has been established to meet the educational needs of a particular locality from shifting to another locality. The second part deals with shifting of the institution from one building to another within the same locality with the permission of the Government. At the outset it should be noted that the petitioner-college was permitted to establish to meet the educational needs of Kovur locality. Temporarily the petitioner-college was permitted to run its courses in a rented building at Nellore. Therefore, commencement of classes in its new building at Kovur cannot be termed as shifting the college from one locality to another locality. It can be said that commencement of classes in its own building is in compliance of the condition imposed in the permission granted to the petitioner-college. However, if any deficiencies are found in the new premises, the respondents are at liberty to point out the same in their Inspection and thereupon the petitioner-college is under obligation to comply the said deficiencies.

11. The learned counsel appearing for the petitioner-college submits that once permission has been accorded APSCHE-2nd respondent is in no way concerned as to the sufficiency or deficiency in the infrastructure to run the courses. In support of his submissions he refers to G.O.Rt.No.1623, dated 12.10.1990. Para 4 of the said Government Order reads as under:

" As the Government have decided in principle to permit all private institutions subject to availability of satisfactory infrastructure and adherence to academic norms, the University concerned/Board of Intermediate Education is requested to verify during affiliation inspection the fulfillment of the conditions prescribed by the Government before granting affiliation and there is no need for Government/State Council of Higher Education to give permission in individual cases eaparately, and the State Council of Higher Education may give a general permission permitting private educational agencies to open new Colleges/Junior Colleges, subject to fulfillment of the conditions stipulated by the Government. The State Council of Higher Education has also separately conveyed its concurrence with the above policy and for the issue of general permission. The Universities/Board of Intermediate Education will, however, mark a copy of their orders granting/refusing affiliation with reasons therefore in each case to the State Council of Higher Education and the Commissioner of Collegiate Education for information and it will be open to the Government to intervenes in any individual case in so far as the fulfillment of the Government conditions are concerned and grant/withdraw/general permission."

What is to be understood from the above referred para of the G.O.Rt.No.1623, dated 12.10.1990 is that once permission has been accorded, it is for the University/Board of Intermediate Education to examine the infrastructure available in the college for grant/continuance of affiliation. No further permission is required from A.P.State Council of Higher Education-2nd respondent when once the college commences functioning on compliance of all the requirements under the Rules, 1987. Therefore, I find that the direction issued by 1st respondent-University under its letter-dated 9.7.2003 to the petitioner-college to obtain the permission from the second respondent to run the classes in its new premises is not legal, proper and not sustainable.

12. Accordingly, this Writ Petition is allowed. No costs.

Dated: 04-07-2005. (B.Seshasayana Reddy, J)

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TNB

Witness the Hon'ble Mr.Justice Bilal Nazki, the Acting Chief Justice on this day Fourth Day of July Two Thousand Five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

One fair copy to the Honourable Sri Justice

B.Seshasayana Reddy (for his Lordships kind perusal)

To

1. The Registrar, Sri Venkateswara University, Tirupathi.
2. The Secretary, A.P.State Council of Higher Education, Saifabad, Hyderabad.
3. Two copies to Government Pleader for Higher Education, High Court Buildigns, Hyderabad (OUT).
4. 2 CD copies